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ONE HUNDRED NINTH CONGRESS

Congress of the United States

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February 23, 2006

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The Honorable Alberto R. Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

Over the course of the past few years, I have written to your office on several occasions in an attempt to obtain information concerning the Department of Justice's use of the PATRIOT Act and its ongoing efforts to combat terrorism. Regrettably, notwithstanding the critical importance of such information and the need for timely feedback, particularly in light of the impending reauthorization of the PATRIOT Act, some of these inquiries have gone unanswered or received inadequate responses. Thus, I write today to renew my request for this crucial information.

First, I renew the request for a response to each of the letters listed below and attached at the end of this letter. Each of these letters raises important questions regarding the Department's undertaking of terrorist-related investigations and its recent intelligence gathering activities and the information you provide could be of great benefit to the ongoing debate over the reauthorization of the PATRIOT Act.

1. Letter to the Honorable William E. Moschella, July 7, 2005, requesting Member access to Foreign Intelligence Surveillance Act applications.
2. Letter from Rep. John Conyers, Jr., Ranking Member, House Judiciary Committee, to the Honorable Daniel J. Bryant, September 17, 2002, regarding the sharing of FISA information with criminal units.
3. Letter from Rep. John Conyers, Jr., Ranking Member, House Judiciary Committee, to the Honorable John D. Ashcroft, November 27, 2001, requesting information on the Justice Department's program to interview Arab and Muslim Americans.

Second, I would greatly appreciate a more thorough and complete response to my questions regarding DOJ's investigation of Brandon Mayfield. The Department's July 12, 2005, letter referencing its April 26, 2005, letter provided to Senator Feinstein simply explains how inaccurate information (namely the use of faulty fingerprint evidence) led to the search of Mr. Mayfield's home. It also enumerates the specific PATRIOT Act provisions directly implicated, as a result of the search. However, my initial request was for all of the available records and information relating to:

- "A. Any Foreign Intelligence Surveillance Act (FISA) orders issued in the investigation, approving the physical search or electronic surveillance conducted on Mr. Mayfield, his office, his home or property;
- B. Any Prosecutorial memoranda detailing deliberations on the investigation;
- C. All audiotape recordings, telephone wiretaps, telephone records the FBI obtained from Mr. Mayfield's home or office, other audio interceptions or transcripts; and,
- D. Any documents seized in evidence."

As I am sure you know, the presence of ongoing litigation is not a barrier to the broad and encompassing power in Congress to obtain information. This power reaches all sources of information in open and closed cases, subject only to narrow privilege exceptions. See *Sinclair v. United States*, 279 U.S. 263 (1929)(rejecting in unequivocal terms the witness' contention that the pendency of lawsuits provided an excuse for withholding information); see also *McGrain v. Daugherty*, 272 U.S. 135 (1927); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975); *Watkins v. United States*, 354 U.S. 178 (1957). In light of these clear precedents, and coupled with the fact that the Inspector General's investigation has been brought to an end, I reiterate my request for all of the aforementioned records.

Third, I still await your office's response to my request for information regarding the number of times the Department has disclosed grand jury information pursuant to its authority under section 203 of the PATRIOT Act. On July 12, 2005, your office maintained that it was in the "process of compiling data responsive to [my] question."

Finally, in a May 19, 2005, letter from Democratic Members of the Committee to you, we asked if your office would support legislation prohibiting individuals included on the FBI's "Violent Gang and Terrorist Organization File" (VGTOF) from purchasing firearms. As you know, included within the VGTOF is the list of individuals that have been designated by the federal government as "known or suspected" terrorists. The question as to whether these individuals should be able to legally purchase dangerous firearms speaks to the heart of our efforts to combat terrorism, and should be included as part of the ongoing debate concerning the reauthorization of the PATRIOT Act. Your response however, provided a couple of months after the initial inquiry, merely informed us of the existence of a working group that was established to

The Honorable Alberto R. Gonzales

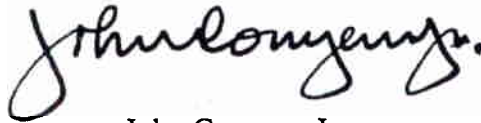
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February 23, 2006

study this issue. Please inform us as to whether you would support such legislation; and, if so, whether you would recommend it being included as part of the PATRIOT Act?

Please provide your response to 2142 Rayburn House Office Building, Washington, D.C., 20515, fax 202-225-4423. Thank you in advance for your continued assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "John Conyers, Jr.", with a large, stylized initial "J".

John Conyers, Jr.
Ranking Member

Enclosures

cc The Honorable F. James Sensenbrenner, Jr.
Chairman

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July 7, 2005

JOHN CONYERS, JR., Michigan
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The Honorable William E. Moschella
Assistant Attorney General
U.S. Department of Justice
Office of Legislative Affairs
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Moschella:

As you are aware, the Committee on the Judiciary is analyzing the various USA PATRIOT Act authorities as part of the reauthorization process this year and is likely to markup a reauthorization bill next week. While the Department of Justice has responded to some of the Committee's inquiries regarding the use of classified Foreign Intelligence Surveillance Act authorities, many Members of the Committee would like to visit the Department and review the documents underlying those responses.

In particular, there is interest in reviewing the applications for orders under 50 U.S.C. § 1842 (pen register/ trap and trace) and 50 U.S.C. § 1861 (business records), which were sections 214 and 215 of the USA PATRIOT Act, respectively.

Because the Committee is scheduled to begin its reauthorization markup on Wednesday of next week, I would like to arrange a series of dates and times for Monday and Tuesday next week when Members of the Committee (and staff with appropriate security clearance) could visit the Department and review these documents. Please contact me as soon as possible at 202-225-6504 so that we can make the necessary arrangements.

Sincerely,



Perry Apfelbaum
Minority Chief Counsel

cc: Phil Kiko
Chief of Staff
U.S. House Comm. on the Judiciary

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September 17, 2002

The Honorable Daniel J. Bryant
Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
9th and Pennsylvania Avenues, NW
Washington, DC 20530

Dear Mr. Assistant Attorney General:

Thank you for your September 13, 2002 response to my August 23, 2002 letter regarding whether the U.S. Department of Justice may have given misleading information to Congress. More specifically, my letter detailed the Department's attempt to cover-up a major court ruling. I now am concerned that your most recent letter further distorts the record.

In our June 13, 2002 letter, the Committee asked how many Foreign Intelligence Surveillance Act ("FISA") certifications were made under the "significant purpose" standard that could not have been made under the previous standard of "the purpose." As an initial matter, it defies explanation that any complete and forthcoming answer to this question would omit completely any discussion of the Foreign Intelligence Surveillance Court's May 17, 2002 opinion. This opinion apparently was the only time the court had ruled against the Department in its over twenty years of existence. Unfortunately, the lower court ruling was released only as a result of the efforts of the court and not the Department. That is why your July answer was, at best, misleading.

Furthermore, your July 26, 2002 response states that the number of FISA search and surveillance authorizations increased because the Foreign Intelligence Surveillance Court has demonstrated a:

"tolerance of increased law enforcement investigations and activity connected to, and coordinated with, related intelligence investigations in which FISA is being used. Given the courts' approach in this area, the 'significant purpose' amendment has the potential for helping the government to coordinate its intelligence and law enforcement efforts to protect the United States from foreign spies and terrorists."

The Honorable Daniel J. Bryant
Page Two
September 17, 2002

Your answer makes it appear that the court authorized FISA searches and surveillance knowing that the Department was coordinating its law enforcement and intelligence gathering efforts. The court's May 17, 2002 opinion is quite to the contrary. The court said the Department has illegally (1) misrepresented facts in FISA applications so it could conduct criminal investigations using the lax FISA standards and (2) allowed criminal attorneys and investigators to direct intelligence gathering requests so the information could be used for criminal cases.

In making its decision, the court referred to disclosures by the Federal Bureau of Investigation to it in March and September 2002 that it had breached the wall between criminal and intelligence investigations. The FBI (1) had agents working on both sides of a case, (2) lied to the court in applications by saying certain FISA targets were not under criminal investigation when they were, and (3) lied about material facts in other applications.

As a result, the court is requiring, *inter alia*, that the FBI, DOJ Criminal Division, and DOJ Office of Intelligence Policy and Review coordinate investigations of foreign attacks, terrorism, or intelligence activities. They also can consult to ensure the long-term intelligence and criminal interests of the United States are protected. At the same time, "law enforcement officials shall not make any recommendations to intelligence officials regarding the initiation, operation, continuation, or expansion of FISA searches or surveillance." Finally, the FBI and Criminal Division must ensure that law enforcement officials do not direct or control the use of FISA to enhance criminal prosecution, either intentionally or inadvertently.

It is clear from that opinion that the court, contrary to your July response, was not aware of the level of coordination the Department was engaging in between its law enforcement and intelligence gathering arms. In responding to my question about this misrepresentation, your September 13 letter describes coordination as having two parts, advice giving and information sharing. You further state the court did accept your views on information sharing and that aspect of coordination was the focus of the July response. Your July 26 letter makes no similar distinction; instead, it makes it appear as if the court knowingly has allowed coordination of both types. In essence, you now are saying the original response contains a distinction that it never before had.

Frankly, I am now even more troubled that the Department has utterly failed to take responsibility for this serious misrepresentation to the U.S. Congress. I urge you to make a full accounting of this matter in a written response to me at the earliest possible moment.

Sincerely,



John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman
U.S. House Committee on the Judiciary

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November 27, 2001

JOHN CONYERS, JR., Michigan
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The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, DC 20510

Dear Mr. Attorney General:

I write to express my concern regarding yesterday's decision by U.S. Attorney Jeffrey Collins to request interviews of hundreds of Arab and Muslim men in the metropolitan Detroit area. Because of concerns that these interviews constitute illegal profiling and raise numerous additional constitutional issues, I request to meet with you personally, as soon as possible, to review this matter.

I have previously stated my concern that the Department's interview program is the product of racial and ethnic profiling of Arab-American and American Muslim communities. Though we may disagree on this issue, I fear that directives at the federal level that you may consider well-intentioned, have not been executed in a manner consistent with constitutional guarantees. For example, my constituents and others in the Detroit Metropolitan area have complained of intimidation by FBI agents seeking information from them at work and their places of worship. While the Justice Department insists it has no reason to believe that interviewees are in any way associated with terrorism, conducting questioning at places of employment has already resulted in embarrassment, suspicion, and in some cases, termination. I have also received complaints of agents intimidating individuals at mosques by insisting that they provide lists of worshippers. In many of these cases, the targeted individuals have reported that agents have been unreceptive to the suggestion that counsel be present for questioning.

As you are no doubt aware, local law enforcement officials have already noted objections to the program your office is seeking to implement. For example, Charles Wilson, the Chief of Police in Detroit has stated, "We're standing with the fundamental rights of individuals under the Constitution," and declared his officers would not "go out and treat people like criminals or even go out and find these people." In Portland, acting police chief Andrew Kirkland refused to participate because the interrogation program violated state law.

The Honorable John D. Ashcroft
Page Two
November 27, 2001

As I have expressed to you before, targeting large numbers of Arab-American men for questioning without probable cause or even a scintilla of evidence amounts to the same kind of racial profiling that you have condemned in the past and sends a chill through the entire Arab-American and American Muslim community. It is important to send clear instructions to offices conducting the investigation to prevent overreaching and abuse in determination of who is to be interviewed and in the interview process itself. While it is my understanding that the letters sent out in the Detroit area indicate that the interviews are completely voluntary, I ask you to ensure that they remain so even after the stated December 4 deadline. I also ask you to take the necessary steps to ensure that interviews be limited to individuals you have strong indications may have relevant information, and that law enforcement officials respect the rights of those involved.

As a result of these concerns, in addition to meeting with you, I would like to receive copies of the following: (i) all memoranda, directives, reports, or other materials describing your program for targeting the 5,000 plus individuals for questioning; (ii) all memoranda, directives, reports or other materials sent to the U.S. Attorneys offices and state and local law enforcement agencies regarding this program and the questions to occur under it; (iii) any standard or form letters or other follow-up being issued by the U.S. Attorneys offices or state or local law enforcement agencies, and any reactions, responses, or input you may have received from these U.S. Attorneys or state or local law enforcement officials; and (iv) an itemization of any safeguards the Justice Department has put in place to insure that constitutional protections are respected with regard to the program. Finally, it is imperative that you let me know what the ramifications are of failing to comply with an interview request. It is difficult to consider the request "voluntary" if negative or adverse ramifications ensue from failure to comply.

Please contact me or my staff at 202-225-6504 so that we may discuss this critical matter and set up a meeting at your earliest convenience. Thank you.

Sincerely,



John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner
Mr. Jeffrey Collins
Mr. Dan Bryant